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TC 1700

PATENT
ATTORNEY DOCKET NO.: 056159-5055

1761

12/27
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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Application of:)
CAIN ET AL)
Application No.: 09/816,864) Group Art Unit: 1761
Filed: April 15, 2001) Examiner: Paden
For: STRUCTURED PARTICULATE)
SYSTEMS)

Commissioner for Patents
Washington, D.C. 20231

Sir:

AMENDMENT TRANSMITTAL FORM

1. Transmitted herewith is an Amendment in response to the Office Action dated July 23, 2002.
2. Additional papers enclosed:

REQUEST FOR RECONSIDERATION

3. Extension of Time

The proceedings herein are for a patent application and the provisions of 37 C.F.R. § 1.136(a) apply.

- ☐ Applicant believes that no extension of time is required. However, this conditional petition is being made to provide for the possibility that applicant has inadvertently overlooked the need for a petition and fee for extension of time.
- ☒ Applicant petitions for an extension of time, the fees for which are set out in 37 C.F.R. § 1.17(a), for the total number of months checked below:

<u>Total Months Requested</u>	<u>Fee for Extension</u>	<u>[Fee for Small Entity]</u>
<input checked="" type="checkbox"/> one month	\$ 110.00	\$ 55.00
<input type="checkbox"/> two months	\$ 400.00	\$ 200.00
<input type="checkbox"/> three months	\$ 920.00	\$ 460.00
<input type="checkbox"/> four months	\$ 1,440.00	\$ 720.00

Extension of time fee due with this request: \$110.00

If an additional extension of time is required, please consider this a Petition therefor.

- ☐ An extension for _____ months has already been secured and the fee paid therefor of \$_____ is deducted from the total fee due for the total months of extension now requested.

4. Constructive Petition

- ☒ EXCEPT for issue fees payable under 37 C.F.R. § 1.18, the Commissioner is hereby authorized by this paper to charge any additional fees during the entire pendency of this application including fees due under 37 C.F.R. §§ 1.16 and 1.17 which may be required, including any required extension of time fees, or credit any overpayment to Deposit Account 50-0310. This paragraph is intended to be a CONSTRUCTIVE PETITION FOR EXTENSION OF TIME in accordance with 37 C.F.R. § 1.136(a)(3).

5. Fee Calculation (37 C.F.R. §1.16)

CLAIMS AS AMENDED						
	Claims Remaining After Amendment		Highest No. Previously Paid	Present Extra	at Rate of	Total Fees
Total Claims (37 C.F.R. §1.16(c))		minus	20		x \$18 each=	+ \$
Independent Claims (37 C.F.R. §1.16(b))		minus	3	0	x \$84 each=	+ \$
[] First presentation of Multiple dependent claim(s)					\$280.00	+ \$
SUB-TOTAL =						\$
Reduction by ½ for filing by a small entity						- \$
TOTAL FEE =						\$

6. Fee Payment

- ☐ No fee is to be paid at this time.
- ☐ Check in the amount of \$_____ for _____. The Commissioner is hereby authorized to charge any additional extension of time fee or additional fee for claims due to Deposit Account No. 50-0310.
- ☒ The Commissioner is hereby authorized to charge any additional fees which may be required, including fees due under 37 C.F.R. §§ 1.16 and 1.17, or credit any overpayment to Deposit Account 50-0310.

Respectfully submitted,

MORGAN, LEWIS & BOCKIUS LLP

Dated: November 13, 2002

By: Paul N. Kokulis
Paul N. Kokulis
Reg. No. 16773

CUSTOMER NO. 09629
MORGAN, LEWIS & BOCKIUS LLP
1111 Pennsylvania Avenue, N.W.
Washington, D.C. 20004
Telephone: (202) 739-5455
Facsimile: (202) 739-3001



IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

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In re Patent Application of

CAIN ET AL

Serial No. 09/816,864

Filed: April 15, 2001

Title: STRUCTURED PARTICULATE
SYSTEMS

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Group Art Unit: 1761
Examiner: Paden

November 13, 2002

REQUEST FOR RECONSIDERATION

Honorable Commissioner of
Patents and Trademarks
Washington, D.C. 20231

Sir:

The Examiner is requested to reconsider the non-entry of the applicants' amendment of October 16, 2002.

The Examiner states that the amendment will not be entered because it raises new issues that require further consideration and the issue of new matter. The Examiner's position is explained by reference to the "Note" as follows:

"The phrase 'nutritionally active organic solid component' is not clearly defined in the specification except by example to folic acid. Thus the components in claim 13 are not defined to be included in the group."

With respect, it is submitted that the reference to "nutritionally active organic solid components" should not raise the issue of new matter or raise new issues. The term "nutritionally active component" appears in the applicants' specification (page 3, lines 6-10) to designate a preferred solid organic component. This language also appears in original claim 7 which was rewritten as claim 24. Hence the language "nutritionally active organic solid component" cannot be new matter.

Furthermore, the addition of the term “nutritionally” to other claims cannot raise new issues, particularly since the term has previously appeared in claim 24.

The Examiner’s comments in the “Note” section of the Advisory Action are to the effect that the term “nutritionally active organic solid component” is not clearly defined in the specification except by reference to folic acid and that the group of materials recited in claim 13, i.e. oleanoic acid, ursolic acid, folic acid, policosanol and phytosterols, are not all described as nutritionally active organic solid components.

However, with respect, it is submitted that the Examiner’s position is in error. For one thing, applicants’ specification (at page 3, lines 6-10) expressly states that “the active solid organic component is preferably a nutritionally active component that in particular improves the oral properties of a food product, or the bioavailability of the active, organic, solid component or the dispersability of the active component in a food.” Thus there is a clear definition in the applicants’ specification as to what is intended by reference to a nutritionally active solid organic component.

Furthermore, it is evident from the applicants’ disclosure that each of oleanoic acid, ursolic acid, folic acid, policosanol and phytosterols are considered to be nutritionally active organic solid components. Thus, beginning at page 1, line 31, the applicants’ specification states that

“the active, organic, solid component(s) preferably is selected from one or more of the components from the group consisting of oleanoic acid, ursolic acid, folic acid, policosanol, phytosterols”.

Thus, it is clear from the applicants’ disclosure at pages 1 and 3 that the compounds grouped together in claim 13 are considered to be nutritionally active organic solid components. This is understood by the applicants’ disclosure at, for example, page 1, lines 3-17, where the group of compounds listed in claim 13 is disclosed as representing known nutritionally active organic compounds for addition to food. Thus, while the use of folic acid is specifically illustrated in the working examples, it is clear from the applicants’ disclosure that the other compounds grouped with folic acid in claim 13 are considered to be nutritionally active organic solid compounds.

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Thus, in brief, the applicants submit that no new issue or new matter is raised by the applicants' response of October 16, 2002. Accordingly, the Examiner is requested to enter the response for allowance or appeal.

Respectfully submitted,

MORGAN, LEWIS & BOCKIUS LLP

By: 

Paul N. Kokulis
Reg. No. 16,773

PNK:mh
1111 Pennsylvania Avenue, N.W.
Washington, D.C. 20004
Phone: (202) 739-3000
Facsimile: (202) 739-3001
Direct: (202) 739-5455